

**Remarks**

The amendments to claims 1, 14, and 31 are for the purpose of clarifying what Applicant regards as the claimed invention. No new matter has been added.

**I. Claim Rejections under 35 U.S.C. § 103.**

Claims 1-3, 8-16, and 21-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication US 2003/0005419 (Pieper) in view of *Portable Software Library Optimization*, 2/1998 (Cain).

**A. Limitations regarding “progressively more dependent” on target processor.**

Claim 1 has been amended to recite that the acts of optimizing are performed such that the first and second optimized forms of the software program are *progressively more dependent* on the target processor (Emphasis Added). Claims 14 and 31 have been amended to recite similar limitations. Pieper and Cain do not disclose or suggest the above limitations.

Rather, Pieper discloses a process 50 in which the source code 52 is optimized in step 58 to obtain a first optimized code 60 that is substantially independent (or “independent” as modified by the Examiner based on Cain) of the architecture of the target processor 12 (see figure 2 and corresponding passage of Pieper). In the process 50, the optimized code 60 is then translated and converted to machine-dependent code 74. An analysis 76 is then performed to generate profile data 78, and step 58 is repeated to perform further optimization. Notably, in Pieper, each time the optimization process 58 is performed, the optimized code is *always* translated into a machine dependent executable code 74 (see figure 2). Thus, in Pieper, the repeating of the optimization step 58 based on a result of the analysis 76 is not to obtain optimized code that is *progressively more machine dependent* (i.e., more machine dependent than the previous optimized form). Therefore, Pieper clearly does not disclose or suggest the subject matter of claims 1 and 14.

Cain also does not disclose or suggest the above limitations, and therefore fails to make up the deficiencies present in Pieper. Since both Pieper and Cain do not disclose or suggest the above limitations, any purported combination of these references cannot result in the subject matter of claims 1, 14, and 31. For at least the foregoing reasons, claims 1, 14, and 31, and any claims depending therefrom, are believed allowable over the cited references of record.

**B. Limitations regarding “flagging”.**

Claim 1 also recites *flagging* the at least one portion to indicate that the at least one portion is dependent on the target processor *if the first optimized form of the software program is optimized to create the second optimized form of the software program* (Emphasis Added). Claims 14 and 31 recite similar limitations. Applicant agrees with the Examiner that Pieper does not disclose the above limitations. Applicant respectfully notes that there is nothing in Cain that discloses or suggests that any act of flagging is *conditioned upon* whether “the first optimized form of the software program is optimized to create the second optimized form of the software program” as described in the claim (i.e., note the limitation “if” in the claims). According to the Advisory Action, the “#if-define” in Cain is allegedly a conditional flag. However, Applicant respectfully notes that there is nothing in Cain that discloses or suggests that the “#if-define” is a flag that is conditioned upon whether “the first optimized form of the software program is optimized to create the second optimized form of the software program,” as described in the claims. For these additional reasons, claims 1, 14, and 31, and any claims depending therefrom, are believed allowable over the cited references of record.

**CONCLUSION**

If the Examiner has any questions or comments regarding this response, please contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

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Respectfully submitted,

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